



TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

Board of Ethics

Peter Tesei, 1st Selectman, Ex Officio Member
Paul A. deBary, Chairman
Robert V. Sisca, Member
Robert F. Grele, Member
John Margenot, Member

Annual Report of the Board of Ethics

Fiscal Year 2014-2015

The Board of Ethics is pleased to submit the following report for the fiscal year ending June 30, 2015. The Board is required to prepare and submit an annual report of its activities to the Board of Selectmen and the Representative Town Meeting pursuant to Section 2.12 (c) of the Greenwich Code of Ethics.

Executive Summary

There were no complaints or requests for advisory opinions filed with the Board of Ethics during the 2014-2015 Fiscal Year. Consequently, the Board has been able to focus its attention on the Town's ethics reporting system. Issues with the current system have been the subject of our reports in previous years. This year, the 1st Selectman, the Town Attorney and the Director of the Department of Human Resources were able to meet with us to discuss these issues.

Five Town Officers filed financial disclosure forms covering the 2014-2015 Fiscal Year. This level is significantly lower than the number of filings for prior fiscal years. The Board was pleased to note that most of the decrease was due to the absence of non-compliant filings by Town employees, which indicates that recent efforts to educate them about the filing requirements have had an effect. The past confusion about whether Town Officers are required to file disclosure statements when they have nothing to report appears to have been removed.

The Board continues to be concerned, however, that the current ethics reporting system is not well understood by many Town Officers and that many find it irrelevant or too burdensome to comply with. It also seems clear that some Town Officers are not making reports despite the Board's efforts to make them aware of its position that they should file them. As a result, the efficacy of the Town's ethics reporting system continues to be in question as discussed more fully below.

The Board has benefited from the continuation of budgeted funds to support its operations in the amount of \$1,500. However, we feel that increased funding for the

activities of the Board would allow it to operate more effectively. Specifically, the Board would like an allocation of funds to secure any professional assistance that may be necessary in connection with the preliminary investigation of a complaint, should the need for such funds arise.

After reviewing its operations during the 2014-2015 Fiscal Year, the Board has the following recommendations: 1) implement improvements to the Town's ethics reporting system, including technical amendments to the Code of Ethics, 2) continue to provide ethics training for Town employees and explore ways to improve ethics training for elected and appointed officials and 3) increase the Board's budget to include funds to cover expenses the Board may need to incur to conduct a proper preliminary investigation of a complaint.

It should be noted that one of the members of the Board, the Rev. Lee Ann Tolzman, moved to Hartford, Connecticut, in connection with a job change and accordingly resigned from the Board during the 2014-2015 Fiscal Year. Rev. Tolzman served ably as Secretary of the Board and her diligence and good counsel will be missed.

Complaints of Violations of the Code

The Board did not receive a single complaint alleging a violation of the Code during the 2014-2015 Fiscal Year.

At times, the Board receives informal communications addressed to the full Board that do not follow the formal provisions provided for making a complaint or request for advisory opinion under the Board's procedures. When these are received, it is our practice to respond to the sender (if known), providing advice about the provisions of the Code that might apply to the subject matter and the procedures for filing a formal complaint or request for advisory opinion, should it prove appropriate.

The Board also conducts a formal review of each of these informal communications at a meeting. The purpose of this review is to determine whether the communication contains information that could serve as the basis for a complaint of a violation of the Code, even though the communication was not expressly stated to be a complaint. If known, the Board advises any person directly affected by the matter of the date, time and place of the meeting at which the review is to be made. For purposes of this review, the Board, without further investigation, will assume that all the allegations made in the submission are credible. If the Board does not find a basis for believing that a violation of the Code may have occurred after carefully considering the allegations on this basis, it makes a determination that the submission should not be treated as a formal complaint. No informal communication was received in the 2014-2015 Fiscal Year that was found to constitute a formal complaint after such a review.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the absence of complaints is indicative of a high level of ethical behavior in Town Government.

Requests for Advisory Opinions

The Board of Ethics did not receive any advisory opinion requests during the 2014-2015 Fiscal Year. However, members of the Board and the Board as a whole provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

Annual Disclosure Statements

Review of Filings. Eight annual disclosure reports were filed with the Town Clerk during the 2014-2015 Fiscal Year. The Board's review of these statements shows some improvement in the awareness and understanding of the Code's requirements on the part of those filing the reports. All but one of the forms filed this year were notarized, while there have been a significant number of non-notarized filings in prior years. In addition, there were no filings by Town employees who had nothing to report, while in the past there have been numerous such filings. There were, however, filings showing nothing to report by two members of the RTM.

Of the six forms filed with the Town Clerk showing interests to report (two each by three persons), five were fully compliant with the Code, while the other failed to provide certain required information¹. As a result, the number of non-compliant filings has been reduced to three. This is a significant improvement over prior years where, even though there were many more filings in total, more than half of the filings were non-compliant in some years.

The following chart summarizes the results of a review of the disclosure forms filed for the 2014-2015 fiscal year as of September 15, 2015:

	RTM	Town Employees	Appointees	Total
Fully Compliant	1	0	4	5
Not Compliant	<u>3</u>	<u>0</u>	<u>0</u>	<u>3</u>
Total	4	0	4	8

There has been a significant decline in the number of reporting persons during the last few years. This has been principally related to the decrease in unnecessary filings, i.e. those in which the filer indicated that he or she had no interest to declare. As noted in our previous annual reports, the filing of such statements has perplexed the Board and we are

¹ One of the persons who filed to disclose an interest did not disclose the actual amount involved in the transaction, but made a notation to the effect that he had "no knowledge" of the amount at issue. It is not readily apparent, however, why the individual could not have readily obtained the required information or made an estimate of the amount. The Board notes that Code of Ethics requires an amount to be stated.

pleased to report that this appears to have been eliminated with respect to Town employees, although certain members of the RTM continue the practice.

Although the Code doesn't require it, for many years it's been the practice of the Chair of the Board to send an annual reminder of the disclosure requirement to all key Town employees and elected and appointed officials. With the decrease in unnecessary filings, however, the low level of reporting in response to this reminder has become more apparent. This may be due to the failure of some Town Officers to make the filings that the Code of Ethics requires. Clearly, it is likely that more than three Town Officers will have a financial interest in a Town transaction during a fiscal year. The Board is aware, for example, of several situations where the Town employs more than one member of a family. In its Advisory Opinions, the Board has consistently advised that the Code requires Town Officers to file a disclosure statement indicating their interest in another family member's employment by the Town. In light of the evident failure of various persons to make such disclosures, one must question whether other less evident interests might also not have been reported on and what the reasons for such failure might be. In particular, the Board has questioned for several years whether a more user-friendly reporting system might result in improved reporting.

Requirements of the Code. Section 2.9 of the Code currently requires Town Officers to file written disclosure statements if they have a substantial financial interest in any transaction with the Town totaling \$100 or more. Where an officer has such an interest, the annual disclosure statement is required to:

- be filed within the 30 days following the end of the Fiscal Year
- be filed with the Town Clerk
- be filed on the form prescribed by the Board of Ethics
- be signed under oath
- disclose the position of the filer as a Town Officer
- state the nature of the interest
- state the total amount received from the transaction

Compliance. It must be noted that the Code requires Town Officers to file a report only *when* they have a financial interest to disclose. By not requiring all Town Officers to file a report *whether or not* they have something to disclose, the Town avoids being buried by a blizzard of paper that contains no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirement to report. There is simply no way to know (without independently receiving specific information) whether the failure of a Town Officer to file a statement is due to 1) the absence of a financial interest to disclose, 2) a deliberate decision not to comply with the Code or 3) ignorance of or forgetfulness about the reporting requirements.

As a result, a review of the statements that are filed doesn't allow the Board to judge with any certainty the degree of overall compliance with the Town's financial disclosure requirements. In particular, the Board has been concerned that the requirement that

disclosure statements must be notarized serves as a disincentive for reporting, especially when the filings are to be made at the end of the year, up to twelve months after the transaction in question may have occurred. Town Officers may not have accurate information available to them at the time that they are required to make the filing and may consider that they will be better off not filing a statement with respect to a small interest rather than take the risk that they will be held responsible for making an inaccurate statement under oath. But it is the *absence* of a report, not the *presence* of a notary's signature, which is most material to the issue of financial disclosure. Where a relevant transaction has not been reported at all, the absence of a notary's signature is immaterial.

Many Town Officers appear to believe that the disclosure requirement is only intended as means of discouraging *impermissible* interests. They therefore assume incorrectly that they are not required to report their *permissible* interests. In fact, the Code assumes that public confidence is improved when *permissible* financial interests are disclosed and requires disclosure of these interests as the best way to reassure the public that they do not influence Town decisions with respect to various transactions. As a result, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

Given the current low level of reporting, it seems likely that at least some of the disclosure contemplated by the Code is not taking place. In the last few years, the Board has made efforts to improve the instructions for the annual disclosure form and a higher percentage of the filings received have been in compliance with the requirements of the Code. However, the very low number of forms filed, particularly for this year, suggests that additional training is necessary to ensure that all Town Officers are aware of the obligation to file. While we take satisfaction in the fact that the quality of the filings by those reporting has improved, the miniscule number of filers shows that there is still much more work to be done in order to achieve the robust reporting system that the Code contemplates.

The Board recently met with the First Selectman, the Town Attorney and the Director of the Department of Human Resources. During that meeting we discussed the possibility of amending the Code of Ethics to provide for an on-line system of reporting that would allow for filings when an interest arises, rather than at the end of the fiscal year, and eliminate the burdensome and unnecessary requirement that filings be notarized. We believe that such a system would be likely to improve financial reporting by all Town Officers and would also provide more timely and useful information to the public.

Plans and Recommendations

Continuing Initiatives. During the 2015-2016 Fiscal Year, the Board will continue to be available to provide information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to provide training to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

Recommendations. Following a review of its activities and experiences in the 2014-2015 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Seek Technical Amendments to the Code to Modernize the Town's Ethics Reporting System. The reporting provisions of the Code of Ethics indicate that requiring disclosure of financial interest is an important Town policy. Implicit in this policy is the assumption that disclosure is a beneficial control process that can be used by the Town in its efforts to ensure compliance with the Code. The current system, however, can be difficult to comply with. Town Officers are required to keep track of all financial interests that they may have in Town transactions throughout each fiscal year and must report on them after the close of the fiscal year. This is understandably difficult, since it can require record keeping and reporting on transactions that are over a year old. The Board believes that a system of reporting that would require disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, may be a more efficacious system for all concerned. We believe that this real time system would be both easier for Town Officers to comply with and provide more timely and useful information to the public. As noted above, there are also questions as to whether the requirement that statements be filed under oath is efficacious. The Board believes that other less onerous mechanisms, including an on-line reporting system, can be used to ensure that the reports that are filed are accurate. However, the Board is not in a position to implementing these changes by itself. Any change from an annual reporting system to the real time reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. The Board would be happy to assist the Selectmen and the RTM with the process of reviewing and implementing any technical amendments that might be proposed. Such amendments could also clarify the reporting requirements in areas where confusion now seems to exist.
2. Continue Training Efforts. Training is an important component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the recent changes made by the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to pursue additional training for elected and appointed Town officers, as well as Town employees, with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements.
3. Increase the Board's Budget to Fund Investigative Expenses. The Town's Code of Ethics Board requires the Board to investigate all complaints that are filed with the Board. Under the Board's procedures, and as permitted by state law, the Board conducts a confidential preliminary investigation to determine

whether there are grounds for a further investigation. Unless the Board has an allocation of funds to cover possible expenses of such a preliminary investigation, it faces a Hobson's choice of either compromising the quality of the investigation or compromising the confidentiality of the investigation by requesting funds to pursue it. Therefore the Board requests an allocation of funds to cover the possible cost of a preliminary investigation. Should the funds be unnecessary, they would of course not be used.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

September 15, 2015